

McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AVCO Corporation, Textron Lycoming Division

File No.: B-236640.2

Date: January 10, 1990

DIGEST

1. Protest against use of oral solicitation is denied where protester fails to show that contracting officer unreasonably determined that use of such procedures was justified on basis of urgency, in view of information indicating that critical supplier would be unavailable if normal procurement procedures were followed.
2. Protest is denied where record contains no evidence that release of protester's not-to-exceed price, submitted in connection with a previously canceled sole-source solicitation, prejudiced the protester.

DECISION

AVCO Corporation, Textron Lycoming Division, protests the award of a contract to Alpha Q, Inc. under request for proposals (RFP) No. DAAJ09-89-R-1318, an oral solicitation issued by the U.S. Army Aviation Systems Command. The protester contends that the agency's use of oral solicitation procedures was improper and that the agency revealed its price to Alpha prior to receipt of oral offers.

We deny the protest.

On July 31, 1989, the contracting officer obtained approval of her justification for limiting competition for a contract for T55 engine inlet housings to the protester. The agency believed that despite efforts to qualify other sources, the protester remained the only source approved on that date, which was the deadline set for receipt of orders by the foreign supplier of a critical alloy component. (The supplier was ceasing production.) The justification document indicated the agency's intention to make an award at a ceiling price of \$2,382,377, negotiable downward, representing the quote submitted by the protester at the agency's request.

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On August 21, Alpha Q filed a protest with our Office. Alpha Q, which had just obtained approval as a qualified source, had obtained a copy of the justification and approval documentation under the Freedom of Information Act. Alpha Q claimed that, contrary to the information in the justification, the foreign supplier had only required customers to identify requirements prior to July 31, not to place firm orders. As a consequence, the agency canceled the sole-source solicitation and made plans to issue a competitive solicitation. Alpha Q thereupon withdrew its protest.

On September 18, the alloy supplier notified the agency that it would accept no further orders after September 30. Believing that there was insufficient time to issue a written solicitation, the agency solicited quotations orally from the protester and Alpha Q on September 21. Alpha Q submitted the lower offer, and the agency awarded a contract to Alpha Q on September 23. AVCO then filed this protest.

The protester contends that the agency denied it a fair opportunity to compete by requiring it to submit an oral, 1-day response to the solicitation, for which its competitor, which had knowledge of the protester's price, had a full month to prepare. AVCO contends that the awardee not only had AVCO's price as a ceiling against which to prepare its own offer but also gained time to prepare a competitive response to the contemplated solicitation. The protester contends that, by contrast, it had less than a day to submit a quotation, without knowing that the solicitation was competitive and without knowing the awardee's price. The protester alleges, without any concrete substantiation, that with more time to submit a proposal it could have developed management and alternative sourcing plans to reduce its price. The protester asserts that under these circumstances, the oral solicitation was neither justified nor fair.

It is undisputed that the agency had an urgent need to insure that its contractor place orders before the alloy supplier ceased accepting them. In this regard, the record establishes that it will take 7 years to develop another source of supply. Given such urgency, we cannot find the use of oral negotiations objectionable where the agency, as here, has made the determinations and findings required by Federal Acquisition Regulation § 15.402(f) (FAC 84-37). Hoyer Constr. Co., Inc., B-216825, Feb. 13, 1985, 85-1 CPD ¶ 194. The protester does not deny that the contracting officer in good faith determined the September 30 deadline for acceptance of orders by the foreign supplier to be firm;

indeed, the agency points out that the protester's correspondence shows that AVCO shared this belief.

Beyond its contention in its comments to the agency report that it is still negotiating orders with the alloy supplier (after September 30), the protester offers nothing to show that the contracting officer's determination, at the time it was made, to award before the September 30 deadline was either unfounded or unreasonable. Moreover, the mere fact that a good faith determination may subsequently prove to be erroneous is no basis for finding it to have been unreasonable. See Haz-Tad, Inc., B-232025.2, July 26, 1989, 89-2 CPD ¶ 82.

Concerning the time available to prepare the protester's quote, the Army states that its procurement clerk (who filed an affidavit) informed the protester's contract administrator on August 23, 1989 (approximately 30 days before receipt of oral quotes) that the sole-source solicitation was canceled and that the requirement would be resolicited on a competitive basis between the protester and Alpha. In any event, the protester's bare assertion that if given more time, it might have lowered its price below that of the awardee, is too speculative and self-serving to sustain its protest on this ground, especially since the protester, as the sole-source incumbent for many years, alone had total access to the cost history of the item for purposes of quickly preparing its best quote. Accordingly, we cannot find that the contracting officer was unreasonable in believing that the solicitation was so urgent that it justified the use of oral solicitation procedures or that the protester was prejudiced thereby.

To the extent that the protester objects to the release of the justification and approval document, which contained its not-to-exceed price, the agency concedes that such release was improper, but believes that there is no evidence that the awardee received a competitive advantage. We agree.

The record contains ample indication that knowledge of the protester's ceiling price was not particularly useful to Alpha in formulating its offer. For one thing, that ceiling price was consistent with the range of historical prices charged by the protester, all of which were public knowledge; furthermore, the protester's actual oral offer against which the awardee competed was well below both its historical prices and the price shown on the justification and approval document. Moreover, Alpha's price was 25 percent less than the price contained in that document, 14 percent less than the protester's oral quotation and

generally consistent with offers submitted by Alpha in its previous attempts to become an approved source. There is therefore no indication that knowledge of the protester's not-to-exceed quotation presented a competitive advantage to Alpha.

The protest is denied.

for Seymour E. Hinchmen
James F. Hinchmen
General Counsel